

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

DAVENPORT SERVICES, INC.)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 01L-04-101 JRS
)	
)	
FIVE NORTH CORPORATION and)	
CECIL COSTON)	
)	
Defendants.)	

Upon Consideration of Motion to Intervene.
DENIED.

Upon Consideration of Motion to Stay Sheriff's Sale.
GRANTED.

Date Submitted: April 10, 2003
Date Decided: May 19, 2003

MEMORANDUM OPINION

Gary A. Bryde, Esquire. 724 Yorklyn Road, Suite 100, Hockessin, Delaware 19707. Attorney for Intervener.

William P. Brady, Esquire. 4 East 8th Street, Suite 300, Wilmington, Delaware 19801. Attorney for Plaintiff.

SLIGHTS, J.

I. INTRODUCTION

Rosa Walker (“Ms. Walker”) has moved to intervene in a *scire facias* mortgage action and to stay the sheriff’s sale of a parcel of land to which she claims title through adverse possession. Plaintiff, Davenport Services, Inc. (“Davenport”), has obtained a judgment against defendants, Five North Corporation (“Five North”) and Cecil Coston, who defaulted on a mortgage held by Davenport. The subject property, 5 North and 5 ½ North Street in New Castle, Delaware (“the Property”), is to be sold at sheriff’s sale in partial satisfaction of the mortgage debt. Ms. Walker contends that the sale cannot go forward because she is the rightful owner of the Property, and she owes no obligation to Davenport.

Davenport has questioned whether the Superior Court may retain jurisdiction over Ms. Walker’s request that the Court determine title to the subject property based on adverse possession. For the reasons that follow, Ms. Walker’s motion to intervene is **DENIED**. Her motion to stay the sheriff’s sale is **GRANTED** pending determination of her claim of ownership of the foreclosed property by adverse possession. The Court will retain jurisdiction over the matter to adjudicate this claim, if requested to do so.

II. FACTS

Five North and Coston executed a mortgage on the Property with Davenport on October 29, 1998. Subsequently, Five North and Coston defaulted on the mortgage payments and, on April 30, 2001, Davenport brought a *scire facias* action to foreclose on the Property. On June 5, 2001, notice of the foreclosure action was mailed to potential holders of liens or tenants in the Property, including Ms. Walker. Ms. Walker alleges that she and/or her mother and stepfather have occupied the Property since 1981. Because Five North and Coston failed to answer or otherwise appear in the action, default judgment was entered against them in the amount of \$69,865.59 with interest.

The sheriff's sale to satisfy the default judgment was scheduled for March 12, 2002. On February 20, 2002, Ms. Walker filed a motion to intervene and to stay the sale based on her alleged ownership of the Property, as evidenced by a quitclaim deed to the Property. The Court held a hearing on these motions on March 11, 2002 and then passed the motion for thirty days to allow for limited discovery. The Court scheduled another hearing for April 2, 2002, but the parties requested a continuance so they could take further discovery. Hearings on this matter were scheduled, canceled, and re-scheduled numerous times over the following year.

On March 13, 2003, the Court intended to convene an evidentiary hearing to resolve the pending motions. On the morning of the hearing, Ms. Walker informed the Court that she now acknowledged the quitclaim deed did not transfer valid title to her. Accordingly, she advanced a new theory, adverse possession, to support her claim of title to the Property. Davenport then questioned the jurisdiction of the Superior Court to rule on an adverse possession claim in the context of a *scire facias* action. Davenport argued that such a claim must be adjudicated by the Court of Chancery. The Court has heard oral argument and has received supplemental submissions from the parties concerning the jurisdictional issues. The matter is now ripe (perhaps overripe) for decision.

III. DISCUSSION

A. The Parties' Contentions

Ms. Walker first argues that she has a right to intervene under Superior Court Civil Rule 24(a) ("Rule 24(a)"). Specifically, she argues that if she is not permitted to intervene, her ability to protect her interest in the Property will be impaired. In response, Davenport maintains that the Court may not consider the motion to intervene because even though Ms. Walker had prior notice of the *scire facias* action, her motion to intervene was filed after the entry of the default judgment and is, therefore, untimely. In addition, Davenport argues that the Superior Court may not

retain jurisdiction over a claim of title based on adverse possession. Interestingly, Davenport did not object to the Court’s jurisdiction when Ms. Walker based her claim of title on the quitclaim deed. Instead, Davenport argues that the Court of Chancery possesses sole jurisdiction to decide the dispute whenever the court must look to extrinsic circumstances beyond the written instruments to determine title.

B. The Motion to Intervene

1. Is Ms. Walker’s Intervention Proper in a *Scire Facias* Action?

Ms. Walker is seeking to intervene in a *scire facias* mortgage foreclosure action. Her motion is governed by Rule 24(a), which states the standard for “intervention of right”:

Upon timely application anyone shall be permitted to intervene in an action: . . . 2) when an applicant claims an interest relating to the property or transaction which is the subject matter of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant’s ability to protect that interest, unless the applicant’s interest is adequately represented by existing parties.¹

The default judgment entered in this *scire facias* action would not impair or impede Ms. Walker’s right to establish her interest in the Property. It is settled that

¹DEL. SUPER. CT. CIV. R. 24(a).

a mortgagor cannot convey more title than he possesses:² “the title mortgaged is the title sold [at the sheriff’s sale].”³ If Ms. Walker’s adverse possession claim is valid, then the default judgment on the mortgage only affects the title of the mortgagor, which may ultimately prove to be no title at all. Ms. Walker may still institute an action to assert her allegedly superior title to the Property, and her ability to protect her interest in the Property as contemplated by Rule 24(a) will not be impaired or impeded by the foreclosure.

Moreover, the nature of a *scire facias* proceeding is so limited that her intervention is, *de jure*, improper. A *scire facias* mortgage action derives from a writ of *scire facias* which requires “the mortgagor to show cause why judgment should not be given against him for the amount of the mortgage debt with a special execution for the sale of the mortgaged premises.”⁴ The Delaware General Assembly has enacted a statutory scheme for *scire facias* mortgages.⁵ And, in keeping with the limited and

²See *Reybold v. Herdman*, 1837 Del. Ch. LEXIS 3, at *8 (“The mortgagor conveys the title as he had it, and can do no more. . . .The judgment on that mortgage could only be against the mortgagors and terre tenants.”); *Mendenhall’s Ex’r v. Ocheltree’s Ex’r*, 1840 Del. LEXIS 38, at *1 (Del. Super.) (“The sale on a *levari facias* issued on any judgment now to be recovered, would be of no more than the mortgagor’s estate, whatever it is; discharged of the equity of redemption, and all other incumbrances of the mortgagor.”).

³*Reybold*, 1837 Del. Ch. LEXIS 3, at *6.

⁴ 59A C.J.S. *Mortgages* §696 (1998).

⁵DEL. CODE ANN. tit. 10, §§5061-5067 (1999)(“Subchapter XI. *Scire Facias* on Mortgage”).

summary proceedings contemplated therein, the statute itself defines the necessary parties to the *scire facias* mortgage action to include (in addition to the mortgagor) “[r]ecord owners acquiring title subject to the mortgage (terre-tenants) which is being foreclosed upon” and “[p]ersons having an equitable or legal interest of record, including an interest pursuant to a judicial sale or a statutory sale pursuant to §8771 et seq. of Title 9.”⁶ Ms. Walker does not fit within either statutory definition. Ms. Walker never purchased the land subject to the mortgage, so she is not a “terre-tenant.” Nor is Ms. Walker’s adverse possession claim indicative of an “equitable or legal interest of record.”

Looking practically at the structure of the *scire facias* proceeding, Ms. Walker’s only potential platform for intervention would be to intervene as a defendant in this action, and then to bring a crossclaim against the mortgagee and possibly a counterclaim against the mortgagor to establish her rights in the land. In a *scire facias* mortgage action, however, a defendant may assert only one of three defenses: 1) satisfaction, 2) payment of part or all of the mortgage, or 3) any other

⁶DEL. CODE ANN. tit. 10, §5061 (1999).

lawful plea in avoidance of the deed.⁷ Ms. Walker could assert none of these defenses in her crossclaim or counterclaim. Clearly, she has not satisfied or paid a mortgage that she did not execute. The defense of a plea in avoidance of the deed has a very specific meaning: it must “relate to the mortgage sued upon, i.e., the plea must relate to the validity or illegality of the mortgage documents.”⁸ Examples include “acts of God, assignment, conditional liability, duress, exception, forfeiture, fraud, illegality, justification, non-performance of condition precedents, ratification, unjust enrichment, and waiver.”⁹ “No authority has been found which extended the plea to matters other than those relating in some degree to the transaction sued upon.”¹⁰ Ms. Walker has not indicated any basis to challenge the validity of the transaction, i.e., the mortgage documents or the deed itself as executed at the time of the mortgage transaction in 1998. Therefore, Ms. Walker’s claim to title does not constitute a plea

⁷Although the General Assembly eliminated these three defenses from the *scire facias* mortgage statute in the 1953 Delaware Code, the purpose in eliminating this provision was to abolish common law pleading in Delaware. The defenses remain viable in *scire facias* mortgage actions. See *Am. Nat’l Ins. Co. v. G-Wilmington Assocs.*, 2002 WL 31383924, at *2 (Del. Super.) (discussing the history and requirements of the *scire facias* mortgage statute).

⁸*Id.*

⁹*Id.*

¹⁰*Gordy v. Preform Building Components*, 310 A.2d 893, 896 (Del. Super. 1973).

in avoidance of the deed.¹¹ In the absence of a “legally recognized defense” in this *scire facias* action, Ms. Walker has no legitimate stake - - and indeed, no place - - in this litigation.¹²

It is worth mentioning, at least anecdotally, that the courts in Pennsylvania, under a similar *scire facias* mortgage statute, have specifically ruled that determinations of adverse claims to title in the *scire facias* mortgage context are improper.¹³ Delaware courts have not ruled on this point, but *Mendenhall’s Executor*

¹¹The Court recognizes that the Superior Court did grant a motion to intervene in a *scire facias* action to a party claiming title in *Fox v. Christina Square Assoc.*, 1994 Del. Super. LEXIS 141. *Fox* is distinguishable, however, because the party directly challenged the validity of the deed which was executed as a part of the mortgage transaction. Here, Ms. Walker’s claim to title is completely unrelated to the actual documents executed at the closing of the mortgage transaction. Furthermore, her adverse possession claim, which she asserts began in 1981, had not even matured at the time of the 1998 mortgage transaction. The Court discerns a significant difference between a challenge to the validity of the deed in the mortgage transaction and a claim to title of the property completely separate from the mortgage transaction at issue.

¹²*Am. Nat’l Ins. Co.*, 2002 WL 31383924, at *2 (“Where a defendant fails to assert a legally recognized defense in a *scire facias* action, ‘allegations will be deemed admitted, and default judgment may be entered thereon.’”).

¹³The Delaware General Assembly enacted a *scire facias* mortgage statute based on the Pennsylvania’s *scire facias* mortgage act of 1705. 2 VICTOR B. WOOLLEY, PRACTICE IN CIVIL ACTIONS IN DELAWARE §1356 (1906). The courts of Pennsylvania have specifically excluded the determination of title from *scire facias* actions. *See Home Land Co. v. Nye*, 1928 Pa. Super. LEXIS 354, at *5 (“The sale on the mortgage had the effect to put the plaintiff in the mortgagor’s place of title, but it was not effective to defeat the estate which the defendant claimed adversely to the title of the mortgagor (citations omitted).”); *Orient B. & L. Assoc. v. Gould*, 86 A. 863, 864 (Pa. 1913)(finding that adverse claimant to the title of the property had no standing to assert claim because judgment in *scire facias* action would not affect right to assert superior title later); *Excelsior Saving Fund v. Cochran*, 70 A. 432, 433 (Pa. 1908)(“All that we here decided is that the act of July 9, 1901, as amended, does not so widen the scope of the statutory proceeding by *scire facias* for the enforcement of a mortgage debt that it may now be applied to determine questions of title to real estate.”).

*v. Ocheltree's Executor*¹⁴ and *Reybold v. Herdman*¹⁵ indicate that Delaware courts would follow Pennsylvania's reasoning. These cases view the sheriff's sale in a limited way: the title to that property must be sold subject to superior interests in the property. Presumably, a superior claim to title could not be trumped by a sheriff's sale. Analogously, Ms. Walker's interest would not be affected by a default judgment and sale after a *scire facias* action if she is later found to be the owner of the Property. Consequently, her motion to intervene must be **DENIED**.

Because the Court has found that Ms. Walker may not intervene in this action, the Court need not address Davenport's argument regarding the timeliness of her motion.

2. Declaratory Judgment is the Proper Means to Determine Ms. Walker's Claim to Adverse Possession

Even though the Court has decided that Ms. Walker may not intervene in this litigation, the Court is mindful of her intent to pursue her claim of ownership of the Property and has decided, therefore, to address the remaining procedural and jurisdictional issues raised in the parties' submissions. The Court must first determine the appropriate procedural vehicle in which Ms. Walker's adverse

¹⁴1840 Del. LEXIS 38 (Del. Super.).

¹⁵1837 Del. Ch. LEXIS 3.

possession claim may be brought to disposition. It appears that both parties simply want a judicial determination of who owns the Property. The most appropriate and efficient means by which to accomplish this goal is a declaratory judgment action.

The Delaware General Assembly enacted the Declaratory Judgment Act¹⁶ to provide “preventive justice.”¹⁷ The Declaratory Judgment Act does not decrease or enlarge the subject matter jurisdiction of the Superior Court or the Court of Chancery.¹⁸ Rather, a declaratory judgment action simply provides a plaintiff a streamlined procedural device to litigate an “actual controversy” in whatever forum (or fora) may have jurisdiction to hear the claim.¹⁹ An actual controversy must:

“(1) involve the rights of other legal relations of the party seeking declaratory relief, (2) be one in which the claim or right or other legal interest is asserted against one who has an interest in contesting the claim, (3) be between the parties whose interests are real and adverse, and (4) be ripe for judicial determination.”²⁰

Ms. Walker’s claim to ownership of the Property meets these four criteria. The new action would involve the rights and legal relations of Ms. Walker, Davenport, Five North, and Coston, all of whom claim an interest in the Property. These parties

¹⁶DEL. CODE ANN. tit. 10, §§6501-6513 (1999).

¹⁷*Hampson v. State*, 233 A.2d 155, 156 (1967).

¹⁸*Heathergreen Commons Condo. Ass’n v. Paul*, 503 A.2d 636 (Del. Ch. 1985).

¹⁹*Mount Hawley Ins. Co. v. Jenny Craig, Inc.*, 668 A.2d 763, 766 (Del. Super. 1995).

²⁰*Id.*

clearly have an adverse interest in the Property and ardently contest ownership. Finally, the action is ripe for judicial decision for several reasons: 1) the title to the Property is clearly in dispute; 2) further factual development is not needed; 3) the declaratory judgment will conserve resources by providing a straightforward determination of title; and 4) the judgment will further the fundamental policy of promoting the transferability of land.²¹ A declaratory judgment action would be the most efficient procedural method to determine the validity of Ms. Walker's adverse possession claim.

3. Does the Superior Court Have Jurisdiction Over this Case?

The separation of Delaware's common law courts from its court of equity is a hallmark of the State's renowned judicial system. Nevertheless, the sometimes opaque jurisdictional boundaries of the courts can present challenging questions, the answers to which strike at the heart of the court's authority to hear and decide a controversy.²² Such is the case here.

²¹*Id.* ("In deciding whether a particular declaratory judgment is ripe for judicial determination, a practical evaluation of the legitimate interest of the plaintiff in a prompt resolution of the question presented and the hardship that further delay may threaten is a major concern. Other necessary considerations include the prospect of future factual development that might affect the determination to be made; the need to conserve scarce resources; and a due respect for identifiable policies of the law touching upon the subject matter of the dispute.").

²²*See, e.g., Catamaran Acquisition Corp. v. Spherion Corp.*, 2001 Del. Super. LEXIS 227, at *27-28 (bifurcating legal and equitable claims and transferring equitable claims to the Court of Chancery).

The Court of Chancery is a court of “limited jurisdiction” that decides matters in equity; its jurisdiction was first defined by the jurisdiction of the English High Court of Chancery in 1776.²³ As the concept of equity jurisdiction has developed in this State, it is now settled that “[e]quity’s appropriate focus should be on the alleged wrong, not on the nature of the claim which is no more than a vehicle for reaching the remedy for the wrong.”²⁴ An action to remove a cloud from title, for instance, derives from the Court of Chancery’s historical equitable powers to cancel or reform otherwise binding agreements (the remedy) in order to correct a defect in the chain of title (the wrong).²⁵

To determine whether the Court may retain jurisdiction over this case, the Court first must discern the nature of the “alleged wrong” at the heart of this controversy. Ms. Walker is in possession of the Property and is claiming title through adverse possession. Davenport claims title by an unbroken chain of recorded deeds. Each party seeks a declaration that its title is superior to the other’s. Neither party has requested an equitable remedy, such as cancellation or reformation of a deed, both of

²³*Clark v. Teeven Holding Co., Inc.*, 625 A.2d 869, 875 (Del. Ch. 1992).

²⁴*Fischer v. Fischer*, C.A. No. 16864, Steele, V.C. (Del. Ch. Nov. 4, 1999)(Mem. Op. at 4). *See also McMahon v. New Castle County*, 532 A.2d 601, 603 (Del. Ch. 1987)(“Chancery jurisdiction is not conferred by the incantation of magic words.... [The court must] go behind the facade of prayers to determine the true reason for the suit.”).

²⁵*Cedar Lane Farms, Inc. v. Taylor*, 1992 Del. Ch. LEXIS 102, at *5.

which would be within the exclusive realm of Chancery’s jurisdiction.²⁶ Essentially, Ms. Walker seeks a forum to present her evidence of adverse possession and, ultimately, a declaration that she is the rightful owner of the Property.

While the nature of the “alleged wrong” may be easy enough to characterize, the jurisdictional consequences remain murky at best.²⁷ After sorting through the arguably conflicting authority on the subject, the Court is satisfied that a “full, fair and complete” remedy at law is available to Ms. Walker - - if she meets her burden of proof - - in the form of a declaratory judgment that she has acquired title to the Property by adverse possession.²⁸ The remedy sought in this Court would be as “prompt, practical and efficient to the ends of justice” as any remedy available in equity.²⁹

²⁶*See id.*; *Gregg v. Rowles*, 1992 Del. Ch. LEXIS 249, at *7 (“The jurisdiction of courts of equity to remove clouds from title is well-settled. . . . Cancellation is the ordinary remedy in removing clouds.”)(quoting 4 *Pomeroy’s Equity Jurisprudence* §1398 (5th ed.1941)); *Newlin v. Phillips*, 80 A. 640, 640 (Del. Ch. 1911)(“The jurisdiction of a court of equity to remove clouds on title is too well established to be discussed.”).

²⁷The court in *Burris v. Cross* noted similar difficulties with respect to a related issue: “[t]he Court conducted its own research and found that there are literally no reported or unreported Superior Court decisions dealing extensively with the issue of subject matter jurisdiction of this Court in a declaratory judgment action dealing with clouds on title to easements, or indeed, with regard to any real property law issue.” 583 A.2d 1364, 1376 n.10 (Del. Super. 1990).

²⁸*Hughes Tool Co. v. Fawcett Publications*, 315 A.2d 577, 579 (Del. 1974)(“The basic jurisdictional fact upon which equity operates is the absence of an *adequate* remedy in the law courts The question is whether the remedy available at law will afford the plaintiffs full, fair and complete relief.”)(emphasis supplied)(citations omitted).

²⁹*Clark*, 625 A.2d at 881(discussing the concept of “concurrent jurisdiction”).

Delaware courts strongly favor a determination of title at law. This time-honored tenet has been observed by both the Court of Chancery and the Superior Court.³⁰ In Delaware, a party's right to claim title in property by adverse possession is governed by a comprehensive statutory scheme.³¹ In its statutes, the General Assembly defined the cause of action but declined to commit such claims to the jurisdiction of any one court. By its silence, the General Assembly left the courts and commentators to their own devices to determine and/or opine where adverse possession claims should be resolved. Both have spoken.

In *Burris*, the court characterized adverse possession claims as actions at law which may be brought to the Superior Court via Delaware's Declaratory Judgment Act.³² Although Judge Barron declined to address the adverse possession claim

³⁰See *Burris*, 583 A.2d at 1377 ("Normally, actions to determine title to land are actions at law, and thus within this Court's jurisdiction."); *Wolfman v. Jablonski*, 99 A.2d 494, 497 (Del. Ch. 1953)("This court, generally speaking, will not decide title to real estate."); *Green v. Cowgill*, 61 A.2d 410, 411 (Del. Ch. 1948)("However, I believe that the decisions in this state indicate a decided preference for a legal determination of title disputes. Consequently, in the exercise of discretion, I conclude that this litigation should be held in abeyance until the title question has been determined in an action at law."); *Sarde v. Sarde*, 111 A. 431, 435 (Del. Ch. 1920)("Still, the trial of titles to real estate has quite uniformly been held in this State to be not in Chancery, but in law courts, and parties are left to pursue legal remedies there when title to land is questioned even incidentally in a court of equity.").

³¹DEL. CODE ANN. tit. 10, §§7901-7904 (1999). Section 7901 states: "[n]o person shall make an entry into any lands, tenements, or hereditaments, but within 20 years next after the person's right or title to the same first descended or accrued."

³²583 A.2d 1364, 1376-78 (Del. Super. 1990).

because the facts did not support it, he was clear in his determination that the claim, if supported, was a claim at law properly adjudicated in Delaware's law court.³³ Consistent with this conclusion is *Boyle v. Ball Properties*,³⁴ *Cataldi v. Berman*³⁵ and *Spry v. Estate of Connor*,³⁶ where in each case the Superior Court presided over "action[s] to determine whether plaintiffs have acquired title by adverse possession."³⁷ *Spry* is especially informative because the Court of Chancery actually stayed a Petition for Partition to allow the plaintiffs to file suit in Superior Court to determine title, again recognizing Delaware's strong preference for determinations of title at law.³⁸

Delaware's most celebrated commentator on practice and procedure, Professor Victor Woolley, concurs with the notion that adverse possession is a legal claim to be presented in a law court. By explaining the common law origin of the cause of action and the evidence which may be presented to the *jury* in pursuance of the claim,

³³*Id.*

³⁴1989 Del. Super. LEXIS 73.

³⁵1984 Del. Super. LEXIS 606.

³⁶2002 Del. Super. LEXIS 113.

³⁷*Boyle*, 1989 Del. Super. LEXIS 73, at *1.

³⁸*Spry*, 2002 Del. Super. LEXIS 113, at *2-3. *See also, Cedar Lane Farms*, 1992 Del. Ch. LEXIS 102, at *6(noting that adverse possession statute "provid[es] for an action at law for title by adverse possession").

Professor Woolley left little doubt regarding his view of the proper forum to adjudicate adverse possession disputes.³⁹

Davenport's argument that the admission of extrinsic evidence in the adverse possession claim would divest this Court of jurisdiction is misplaced. Davenport cites the rule in *Supplee v. Eckert*,⁴⁰ which was an action to remove a cloud from title, to support his assertion. Professor John Pomeroy, in his treatise, *Equity Jurisprudence*, explains the significance of equity's role in actions to quiet title:

While a court of equity will set aside a deed, agreement, or proceeding affecting real estate, where extrinsic evidence is necessary to show its invalidity, because such instrument or proceeding may be used for annoying and injurious purposes at a time when the evidence to contest or resist it may not be as effectual as if used at once, still, if the defect appears upon its face, and a resort to extrinsic evidence is unnecessary, the reason for equitable interference does not exist, for it cannot be said that any cloud whatever is cast upon the title.⁴¹

As Professor Pomeroy explains, equity jurisdiction does not exist in an action to remove a cloud if the instrument or proceeding is invalid on its face. In those instances, the Court of Chancery does not have jurisdiction because the facially invalid instrument or proceeding is not a "cloud" on title. To allow the rule which recognizes equity's jurisdiction to remove a cloud on title to sweep all controversies

³⁹1 VICTOR B. WOOLLEY, PRACTICE IN CIVIL ACTIONS IN DELAWARE §528 (1906).

⁴⁰120 A.2d 718 (Del. Ch. 1956).

⁴¹4 JOHN N. POMEROY, EQUITY JURISPRUDENCE §1399 (5th ed. 1941).

relating to the title of real property into the Court of Chancery's jurisdiction simply because extrinsic evidence might be presented would extend the rule far beyond its intended purpose.⁴² The rule is applied in the context of an action to remove a cloud alone; and, it is not applicable here.⁴³

Based on the foregoing, the Court concludes that Ms. Walker may maintain a suit to determine title based upon adverse possession in the Superior Court. If Ms. Walker does file a declaratory judgment action in Superior Court, the remedy will be limited to a declaration of the *bona fides* of her claim of adverse possession, from which the prevailing party may claim marketable title.⁴⁴ To the extent Ms. Walker seeks further remedial action, such as canceling a deed in the chain of title, she must seek redress in the Court of Chancery in a suit to quiet title.⁴⁵

⁴²The right to trial by jury, of course, is not available in the Court of Chancery. *See Park Oil, Inc. v. Getty Refining and Marketing Co.*, 407 A.2d 533, 535 (Del. 1979) ("The right to a jury trial, however, applies to an action at law; it does not apply in an equity suit.").

⁴³*See, e.g., id.* at 430; *Murphy v. Mayor of Wilmington*, 1880 Del. LEXIS 14, at *54 ("A valid legal objection appearing upon the face of the proceedings, through which the adverse party can alone claim any right to the complainants' land is not in law such a cloud upon the complainant's title as can authorize a court of equity to set aside or stay such proceedings.").

⁴⁴*See* 10 THOMPSON ON REAL PROPERTY §87.03 (2d Thomas ed. 1995) ("Court action is not necessary to establish title by adverse possession, but the title is not marketable until there is a judicial determination."); 2 RUFFORD G. PATTON & CARROLL G. PATTON, PATTON ON TITLES §539 (2d ed. 1957) (Supp. 1989) ("The decree becomes a muniment of title. . . . [A] judgment in favor of a plaintiff who claims absolute title is therefore all that is necessary to bar every right of ownership which the defendant might have set up.").

⁴⁵*See* 4 JOHN N. POMEROY, EQUITY JURISPRUDENCE §1398 (5th ed. 1941) ("The jurisdiction of courts of equity to remove clouds from title is well-settled. . . .").

C. Motion to Stay Sheriff's Sale

In the interest of efficiency,⁴⁶ the sheriff's sale will remain on hold while the title to the Property is decided.⁴⁷ Ms. Walker shall file an appropriate action in this court or in the Court of Chancery as she chooses (depending upon the remedy she seeks) in accordance with this opinion.⁴⁸ If Ms. Walker fails to file her action within thirty days, the Court will lift the stay, and the sheriff's sale will proceed.

IV. CONCLUSION

Based on the foregoing, Ms. Walker's motion to intervene is **DENIED** and her motion to stay sheriff's sale is **GRANTED**. Ms. Walker shall file her action to establish title within thirty days of this order.⁴⁹ If she does not file within the thirty days, the Court's stay of the sheriff's sale will be lifted.

⁴⁶The Court retains jurisdiction over the *scire facias* proceedings until the sheriff's sale is confirmed. *See Burge v. Fidelity Bond and Mortgage Co.*, 648 A.2d 414, 420 (Del. 1994) ("Judicial review of a contested sheriff's sale implicates the [Superior] court's inherent equitable power to control the execution process and functions to protect the affected parties from injury or injustice.").

⁴⁷*See PNC Bank, Delaware v. Philben, Inc.*, 1996 Del. Super. LEXIS 397, at *7-8 (staying confirmation of sheriff's sale pending disposition of party's claim of equitable covenant on the property).

⁴⁸*See id.* at *8 (staying proceedings indefinitely and allowing rebuffed intervenor twenty days to file action in Court of Chancery to establish equitable interest in property).

⁴⁹ If the action is filed in Superior Court, plaintiff shall reference this action as a companion action on her CIS form so that the matter can be assigned to this judge for disposition.

IT IS SO ORDERED.

Judge Joseph R. Slights, III

Original to the Prothonotary.